**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**APPEAL FROM ORDER NO.506 OF 2007**

M/s.Janus Investments Pvt.Ltd. ...Appellant

vs.

Municipal Corporation of Greater Mumbai ...Respondent

Mr.V.A.Thorat i/b Mr.Prakash Lad for the Appellant
Ms Geeta Joglekar for Respondent-Corporation.

**CORAM: A.S.OKA,J.**
**DATE : JUNE 28, 2007.**

**P.C.:**

1. Considering the fact that the Appeal arises out of an interim order passed by the Trial Court and considering the nature of the impugned order, Appeal is taken up for final hearing forthwith.

2. In a suit for declaration and injunction filed by the Appellant, a Notice of Motion was taken out for temporary injunction. The learned Trial Judge by order dated 2nd June 2006 granted ad-interim injunction in favour of the Appellant restraining the Respondent from taking any action against the Appellant, occupants and licensees in respect of the suit property. By order dated 12th June 2006 which is impugned in this Appeal, the learned Trial Judge has dismissed the Notice of Motion. While considering the prayer made by the Advocate for the Appellant for continuation of the ad-interim order, the learned Judge observed that the Appellant is not the occupier of the premises and the learned Judge has ordered the

Corporation to follow due process of law.

3. The learned Senior Counsel for the Appellant submitted that the Notice of Motion could not have been disposed of by passing such a cryptic order. He submitted that the learned Judge has not at all considered the prayers made in the Notice of Motion on merits. The learned Advocate for the Respondent pointed out that the Respondent-Corporation had already adopted due process of law by issuing a notice under section 53(1) of the Maharashtra Regional and Town Planning Act,1966. Based on the said notice, the Appellant had submitted a proposal for change of user which has been rejected by the communication dated 28th September 2005. She invited my attention to the prayer clauses (a) and (b) of the Notice of Motion and submitted that no interference is called for as the due process of law has already been followed.

4. I have considered the submissions. Perusal of the impugned order shows that the learned Judge has not at all referred to the nature of the prayers made in the Notice of Motion. The case of the Appellant was that the action should not be taken against the premises unless and until the representation dated 29th March 2005 made by the Appellant to the Urban Development Department was decided.

5. The learned Judge has completely misdirected himself by

observing that the Appellant not being in possession cannot seek protection. Perusal of the impugned order shows that the same has been passed in a cryptic manner without considering the prayers made in the Notice of Motion. Only on this ground, the impugned order deserves to be quashed and set aside and the Notice of Motion deserves to be heard afresh.

6. Hence, I pass the following order :

i) Impugned Judgment and Order dated 12th June 2007 is quashed and set aside and Notice of Motion No.216 of 2007 is restored to the file.

ii) The pending Notice of Motion shall be decided afresh within a period of two months from today. Till the disposal of the Notice of Motion, ad-interim order passed by the Trial Court on 2nd June 2007 will continue to operate.

iii) All contentions of the parties on merits are expressly kept open.

iv) Appeal is disposed of accordingly.

**JUDGE**